

of such employee, which equals, in the aggregate, at least \$44,000.

(2) In applying the retirement benefit test of paragraph (1) of this subsection, if any such retirement benefit is in a form other than a straight life annuity (with no ancillary benefits), or if employees contribute to any such plan or make rollover contributions, such benefit shall be adjusted in accordance with regulations prescribed by the Equal Employment Opportunity Commission, after consultation with the Secretary of the Treasury, so that the benefit is the equivalent of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions are made.

(Pub. L. 90-202, §12, Dec. 15, 1967, 81 Stat. 607; Pub. L. 95-256, §3(a), (b)(3), Apr. 6, 1978, 92 Stat. 189, 190; 1978 Reorg. Plan No. 1, §2, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781; Pub. L. 98-459, title VIII, §802(c)(1), Oct. 9, 1984, 98 Stat. 1792; Pub. L. 99-272, title IX, §9201(b)(2), Apr. 7, 1986, 100 Stat. 171; Pub. L. 99-592, §2(c), 6(a), Oct. 31, 1986, 100 Stat. 3342, 3344; Pub. L. 101-239, title VI, §6202(b)(3)(C)(ii), Dec. 19, 1989, 103 Stat. 2233.)

#### AMENDMENTS

1989—Subsec. (a). Pub. L. 101-239 struck out “(except the provisions of section 623(g) of this title)” after “in this chapter”.

1986—Subsec. (a). Pub. L. 99-592, §2(c)(1), which directed that “but less than seventy years of age” be struck out was executed by striking out “but less than 70 years of age” after “40 years of age” as the probable intent of Congress.

Pub. L. 99-272 inserted “(except the provisions of section 623(g) of this title)” after “this chapter”.

Subsec. (c)(1). Pub. L. 99-592, §2(c)(2), which directed that “but not seventy years of age,” be struck out was executed by striking out “but not 70 years of age,” after “65 years of age” as the probable intent of Congress.

Subsec. (d). Pub. L. 99-592, §6(a), (b), temporarily added subsec. (d) which read as follows: “Nothing in this chapter shall be construed to prohibit compulsory retirement of any employee who has attained 70 years of age, and who is serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) at an institution of higher education (as defined by section 1141(a) of title 20).” See Effective and Termination Dates of 1986 Amendments note below.

1984—Subsec. (c)(1). Pub. L. 98-459 substituted “\$44,000” for “\$27,000”.

Pub. L. 95-256, §3(a), designated existing provisions as subsec. (a), substituted “40 years of age but less than 70 years of age” for “forty years of age but less than sixty-five years of age”, added subsecs. (b) and (c), and temporarily added subsec. (d). See Effective and Termination Dates of 1978 Amendment note below.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 applicable to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub. L. 101-239, set out as a note under section 162 of Title 26, Internal Revenue Code.

#### EFFECTIVE AND TERMINATION DATES OF 1986 AMENDMENTS

Amendment by Pub. L. 99-592 effective Jan. 1, 1987, with certain exceptions, see section 7(a) of Pub. L. 99-592 set out as a note under section 623 of this title.

Section 6(b) of Pub. L. 99-592 provided that: “The amendment made by subsection (a) of this section [amending this section] is repealed December 31, 1993.”

Amendment by Pub. L. 99-272 effective May 1, 1986, see section 9201(d)(2) of Pub. L. 99-272, set out as an Ef-

fective Date of 1986 Amendment note under section 1395p of Title 42, The Public Health and Welfare.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 802(c)(2) of Pub. L. 98-459 provided that: “The amendment made by paragraph (1) of this subsection [amending this section] shall not apply with respect to any individual who retires, or is compelled to retire, before the date of the enactment of this Act [Oct. 9, 1984].”

#### EFFECTIVE AND TERMINATION DATES OF 1978 AMENDMENT

Section 3(b) of Pub. L. 95-256 provided that:

“(1) Sections 12(a), 12(c), and 12(d) of the Age Discrimination in Employment Act of 1967, as amended by subsection (a) of this section [subsecs. (a), (c), and (d) of this section] shall take effect on January 1, 1979.

“(2) Section 12(b) of such Act, as amended by subsection (a) of this section [subsec. (b) of this section], shall take effect on September 30, 1978.

“(3) Section 12(d) of such Act, as amended by subsection (a) of this section [enacting subsec. (d) of this section], is repealed on July 1, 1982.”

#### TRANSFER OF FUNCTIONS

“Equal Employment Opportunity Commission” substituted for “Secretary”, meaning Secretary of Labor, in subsec. (c)(2) pursuant to Reorg. Plan No. 1 of 1978, §2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, which transferred all functions vested by this section in Secretary of Labor to Equal Employment Opportunity Commission, effective Jan. 1, 1979, as provided by section 1-101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

### § 632. Omitted

#### CODIFICATION

Section, Pub. L. 90-202, §13, Dec. 15, 1967, 81 Stat. 607; 1978 Reorg. Plan No. 1, §2, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781, which required the Equal Employment Opportunity Commission to submit to Congress an annual report on the Commission’s activities including an evaluation and appraisal of the effect of the minimum and maximum ages established by this chapter, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 123 of House Document No. 103-7.

### § 633. Federal-State relationship

#### (a) Federal action superseding State action

Nothing in this chapter shall affect the jurisdiction of any agency of any State performing like functions with regard to discriminatory employment practices on account of age except that upon commencement of action under this chapter such action shall supersede any State action.

#### (b) Limitation of Federal action upon commencement of State proceedings

In the case of an alleged unlawful practice occurring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice, no suit may be brought under section 626 of this title before the expiration of sixty days after proceedings have been commenced under the State law, unless such proceedings have been earlier terminated: *Provided*, That such sixty-day period shall be extended to